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Federal Communications Commission
Office of the Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter Of
The Telephone Consumer Protection
Act of 1991

CC Docket No. 92-90

REPLY COMMENTS OF TELEMARKETING MAGAZINE

Telemarketing Magazine ("TM"), by its undersigned counsel, hereby submits these Reply Comments on the Commission's Notice of Proposed Rulemaking in the above-captioned docket. Telemarketing Magazine is the leading periodical covering the telemarketing community since 1982. As such, TM is intimately familiar with the telemarketing practices of telemarketers of all sizes and all segments of the telemarketing industry.

TM concurs with the broad consensus demonstrated in the initial comments in this proceeding that the in-house suppression list regulatory framework proposed in the Commission's Notice^{1/} is the most effective and economical means of protecting consumers from unwanted telephone solicitations from live telemarketers. TM believes that the in-house suppression list regulatory framework strikes the appropriate balance between consumers' right to privacy and the legitimate telemarketing

^{1/} In the Matter of the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90 (released April 17, 1992) ("Notice").

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activities that the Telephone Consumer Protection Act of 1991 ("TCPA") sought to establish.

Unlike the alternative proposals,^{2/} this industry self-regulating mechanism recognizes that telemarketing services offer a convenient, reliable means for consumers to learn of and purchase new consumer products and services. Based on TM's long term involvement in reporting on the activities of telemarketers and the telemarketing industry, TM strongly believes that legitimate telemarketing activities provide a valuable service to U.S. consumers. In TM's opinion, when used appropriately and reasonably, telephone sales practices offer an inexpensive and efficient means for businesses to market their products. Accordingly, any regulatory framework adopted by the Commission must safeguard the rights of those who want to receive telemarketing calls.

As a number of commenters argue,^{3/} in-house suppression lists are "the most effective and reliable means of identifying those consumers who object to telephone solicitations without

^{2/} The Commission's Notice proposes five regulatory alternatives to regulate telephone solicitations from live operators. These include regulatory schemes based on: 1) the establishment of a national or regional database of persons who object to receiving telephone solicitations; 2) network technologies that would enable called parties to block calls from certain numbers designated for telemarketers; (3) company or industry generated "do not call" lists; (4) special directory markings, and (5) time of day restrictions. Notice at ¶¶ 29-33.

^{3/} See generally Comments of Direct Marketing Association, J.C. Penney, SafeCard Services, Inc., Consumer Bankers Association.

unduly increasing the cost of existing telemarketing operations"^{4/}. TM concurs with SafeCard Services, Inc. and other parties that in-house suppression lists are superior to the alternative regulatory approaches proposed in the Notice. The in-house suppression list option 1) provides consumer flexibility in deciding which companies are permitted to call them, 2) is inexpensive to implement and easy to enforce 3) provides a high level of accuracy, 4) minimizes use of Commission resources, and 5) inherently recognizes that telemarketers have no economic incentive to devote time and money to contacting unreceptive customers.

In contrast to the benefits of an in-house suppression list, each of the proposed alternatives is overly burdensome to telemarketers and consumers who want to receive calls, costly to implement, difficult to enforce and less effective. Contrary to the National Consumer League's ("NCL") recommendation that the Commission withdraw its Notice, TM urges the Commission to specifically adopt the in-house suppression list proposal.

The NCL's rational for withdrawing the Notice is wholly without merit. NCL argues that the Commission should withdraw its proposal because it is contrary to the TCPA. Specifically, NCL argues that the Commission's failure to calculate the "nuisance factor" of telemarketing calls in the balancing of consumer right to privacy and business interests contravenes

^{4/} Comments of SafeCard Services, Inc. at 7.

Congressional intent.^{5/} TM submits that NCL is plain wrong in its interpretation of Congress' intent in enacting the TCPA. First, the legislative history and TCPA clearly establish that the "nuisance factor" that NCL attempts to impose on the whole TCPA is very limited. The TCPA addresses two classes of telemarketers, those who use autodialers and those who use live operators. In banning the use of all autodialers to initiate residential calls without the prior consent to the called party, Congress expressly found that "residential telephone subscribers consider automated or pre-recorded telephone calls ... to be a nuisance and an invasion of privacy." (emphasis added). Contrary to NCL's argument, Congress did not find that calls from live operators were a nuisance to residential subscribers. Accordingly, there is no basis for NCL's suggestion that the "nuisance factor" is to be considered with respect to telemarketing calls involving live operators.

This distinction is further underscored in the TCPA. Consistent with the TCPA's legislative history, Congress expressly addresses autodialer and live operator calls in two separate sections of the Act. Section 3 of the Act bans the use of autodialers to initiate residential calls without prior consent of the "called party." It is in Subsection (c) of Section 227 entitled "Protection of Subscriber Privacy Rights", specifically addressing telemarketing calls by live operators, that the Commission is instructed "to compare and evaluate

^{5/} Comments by National Consumer League at 3, 8-10.

alternative methods and procedures for their effectiveness in protecting such privacy rights... " Thus, the Commission's Notice is not only consistent with the TCPA, as proposed, the Notice is following the clear mandate of Subsection (c) of Section 227.

NCL also urges the Commission to incorporate into its regulatory framework the use of the United States Postal Service Change of Address database system to compile and maintain a listing of consumers who wish to opt out of receiving telemarketing calls. NCL argues that the Postal Service could easily add a question on the change of address form and then input this information in the Postal Service's database along with address information. According to NCL, telemarketers would then have an opportunity to purchase the list from the Postal Service.

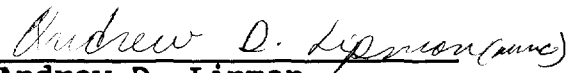
At first glance, this seems like a cost-effective approach to regulating telemarketers. Upon closer examination however, a number of questions arise with respect to the legality and practicality of using the United States Postal Services' system. NCL does not provide any estimates on the cost of implementing this system nor any insight regarding the Postal Service's receptivity to such a proposal or the logistics of such proposal. Undoubtedly, the proposed new use of the existing Postal Service database would disrupt the system and require a certain amount of capital investment. The burden of this additional investment would probably be borne by postal ratepayers. These costs and

logistical constraints must be fully explored before the Commission can evaluate NCL's proposal. Accordingly, it is unclear, at this time, whether this approach would fulfill the Commission's mandate to select the most "effective and efficient" method to protect residential telephone consumers' privacy rights.

Accordingly, TM urges the Commission to adopt the in-house suppression lists, as proposed in the Notice, as the regulatory framework for regulating telemarketers.

Respectfully submitted,

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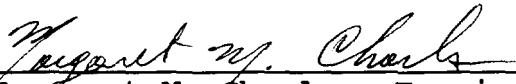
Dated: June 25, 1992

CERTIFICATE OF SERVICE

I, Margaret M. Charles, hereby certify that on this 25th day of June, 1992 a copy of the Reply Comments Of Telemarketing Magazine have been served by courier to the following:

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